

**KEY INFORMATION**

**Ward** Maryfield

**Proposal**

Construction of External Smoking Canopy

**Address**

77 High Street  
Dundee  
DD1 1SD

**Applicant**

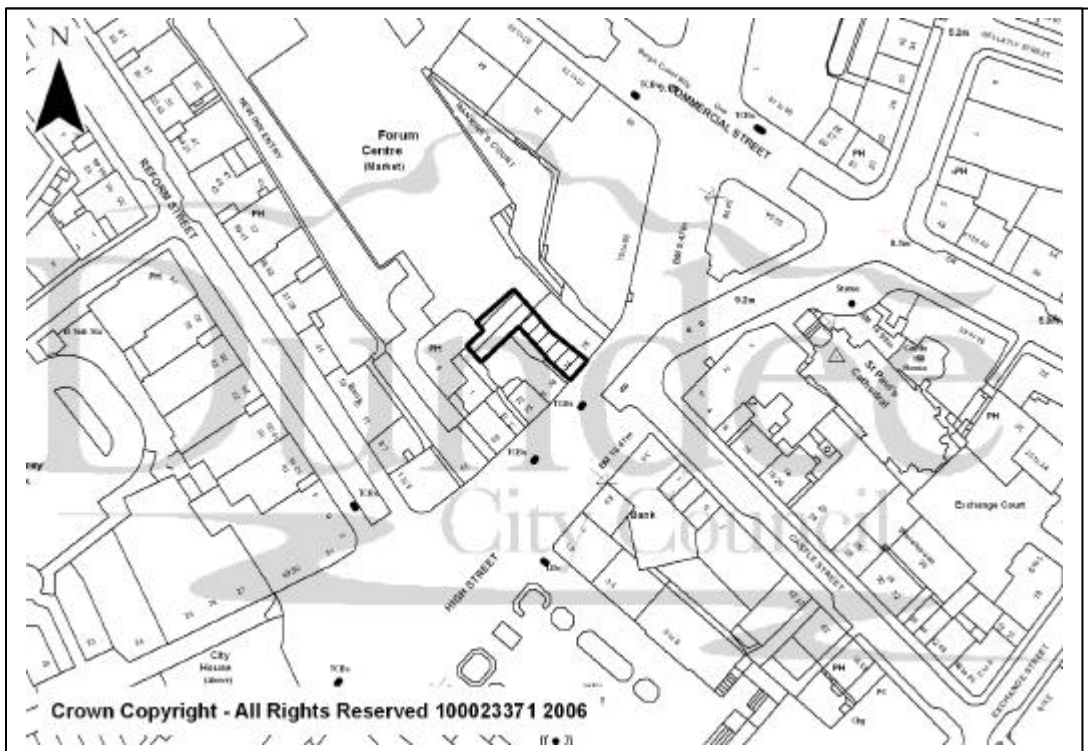
The Noble Organisation  
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NE11 0PJ

**Agent**

Projects Department  
The Noble Organisation  
1A Dukesway Court  
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NE11 0PJ

**Registered** 21 Feb 2007

**Case Officer** C Walker



# Proposal for Smoking Canopy at High Street Amusement Centre

The construction of an External Smoking Canopy is **RECOMMENDED FOR REFUSAL**. Report by Director of Planning and Transportation

**RECOMMENDATION**

The proposed development detracts from the setting of the adjoining Category A listed buildings contrary to Policy 55 of the adopted Local Plan and the statutory duty set out in Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act. The application is recommended for **REFUSAL**.

**SUMMARY OF REPORT**

- Planning permission is sought to retain an external smoking canopy linked to the adjoining amusement centre at 77 High Street. The canopy is a lean to structure in Campbell's Close between 2 Category A listed buildings.
- Policies 1, 55 and 61 of the Local Plan are relevant to the determination of this application.
- Two letters of objection were received, 1 from a neighbouring business and 1 from a resident of the city stating concerns about the nature of the proposal and the impact on the listed buildings.
- The Head of Environmental Health and Trading Standards does not disagree with a Noise Report submitted by the applicants which concludes that noise will not be a problem. Historic Scotland state that the structure which has been erected does not, in terms of materials or design, relate sympathetically to the character of the listed building which it will extend.
- The proposed development detracts from the setting of the adjoining Category A listed buildings contrary to Policy 55 of the adopted Local Plan and the statutory duty set out in Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act.

## DESCRIPTION OF PROPOSAL

Planning permission is sought to retain an external smoking canopy. The canopy is a lean to structure measuring some 3.8 by 1.9 metres and is set into the corner formed by a single storey stone building to the north east and a 2 storey brick building to the north west. The roof is a lean to felted structure supported by timber posts. The south east and south west sides of the structure are enclosed by timber balustrading of a height of approximately 1 metre.

There are 2 heaters on the roof of the ceiling of the structure. There are also 3 amusement with prizes machines set against the stone wall to the north east of the structure but the retention of these machines does not form part of the current application (there are separate applications for planning permission and listed building consent to retain the shelter and the machines). The shelter is accessed from a door on the south eastern elevation of the 2 storey brick building. The structure has an occupancy of 5 persons.

## SITE DESCRIPTION

The site comprises the northern part of Campbell's Close, a narrow close between 76 and 77 High Street. It varies in width from some 1.2 metres at the entrance to some 3.4 metres at its widest point. The ground floor of 77 High Street as well as a single storey link building and a 2 storey brick building to the rear are occupied by the applicants as an amusement centre. This amusement centre has a fire door and access to Campbell's Close at its north western side.

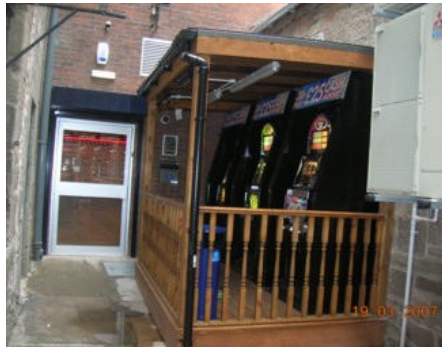
The upper levels of 77 High Street are accessed from Campbell's Close, just inside the entrance pend. Although this part of the property is currently vacant, it was last used as a hairdressers and flats. Planning permission and listed building consent have recently been granted to convert the first floor former hairdressers to a flat and to refurbish the flats on the 3 levels above.

On the south western side of the close the building at 75-76 High Street is a three storey and attic building occupied by a shoe shop at ground floor level and soon to be completed hostel accommodation above. The

shoe shop has a fire escape onto Campbell's Close.

There is a decorative iron gateway at the entrance to Campbell's Close which, when shut, forms an effective screen.

The buildings on either side of the close are Category A listed buildings and the site lies within the Central Area Conservation Area which has been designated as "Outstanding" by Historic Scotland.



## POLICY BACKGROUND

### Dundee and Angus Structure Plan 2001-2016

There are no policies relevant to the determination of this application.

### Dundee Local Plan 2005

The following policies are of relevance:

Policy 1: Vibrant and Sustainable Communities

The City Council will promote vibrant communities, encouraging the development of an appropriate range of services and facilities close to and within housing areas. New development should be in accordance with other policies in the Plan and seek to minimise any affect on the environmental quality enjoyed by local residents by virtue of design, layout, parking and traffic movement issues, noise or smell.

Policy 55: Urban Design

For all new developments the emphasis will be on design quality and the City Council will seek the creation of new public places and points of interest which incorporate architectural and landscape features and reflect and enhance historic street layouts, significant views and vistas. All

development should respect the setting of listed buildings.

The City Council require the use of Design Statements for planning applications or listed building applications for new buildings or extensions to existing buildings on significant sites.

All development will, in its design and layout, be expected to contribute to an environment which is safe and accessible to all.

Policy 61: Development In Conservation Areas

Within Conservation Areas all development proposals will be expected to preserve or enhance the character of the surrounding area. This will require the retention of all features which contribute to the character and appearance including unlisted buildings of townscape interest, trees and landscape features and the historic pattern of streets and spaces, as identified in the Conservation Area management plans to be advanced in the near future.

### Scottish Planning Policies, Planning Advice Notes and Circulars

NPPG 18 Planning and the Historic Environment sets out the framework for dealing with planning applications affecting listed buildings and conservation areas.

### Non Statutory Statements of Council Policy

There are no non statutory Council policies relevant to the determination of this application.

## SUSTAINABILITY ISSUES

There are no specific sustainability policy implications arising from this application.

## SITE HISTORY

Planning permission was granted on appeal for the change of use of a shop unit at 77 High Street to an amusement centre in April 2003 - application 02/00453/COU refers. This permission was recently implemented. The unauthorised structure which is the subject of the current application was erected at that time. There is an accompanying application for listed

building consent for this development, the Report on which is contained elsewhere on this Agenda - application 07/00169/LBC refers. There is also a current set of applications (planning and listed building) to retain the structure including the amusement with prizes machines, the Reports on which are contained elsewhere on this Agenda - applications 07/00240/FUL and 07/00239/LBC refer.

## PUBLIC PARTICIPATION

Statutory neighbour notification was carried out and a 2 letters of objection were received, 1 from a neighbouring business and 1 from a resident of the city. The operators of the adjoining shoe shop dispute the fact that the applicants have a legal right to place this structure in the close, state that it obstructs fire escape both from their premises and the amusement centre and object to the use of the close as a gaming area.

The other letter states concerns about the structure being unsightly and a hazard to passers by and adversely affecting the Category A listed buildings and the Central Area Conservation Area.

Copies of these letters are available for inspection in the Members Lounges and the points raised are considered in the Observations Section of this Report.

## CONSULTATIONS

The Head of Environmental Health and Trading Standards stated that the development will encourage people to congregate in a specific area resulting in an elevated noise burden on nearby residential properties. As a result of this the applicants were informed about noise problems and submitted a Noise Report.

This Report concludes that when measured from the proposed flats at 77 High St, that vocal noise from users of the smoking shelter is occasionally audible but at a level that is unlikely to be considered a nuisance. The Report also notes that the refurbishment of the flats is likely to improve acoustic attenuation.

The Head of Environmental Health and Trading Standards has considered this Report and noted that although its conclusion that there will not be a problem is reasonable, this is based on

background noise levels which are affected by noise from air conditioning units which have recently been erected by the applicants without planning permission.

Historic Scotland were consulted informally on the development and responded stating that although some form of shelter may be appropriate at this location, the structure which has been erected does not, in terms of materials or design, relate sympathetically to the character of the listed building which it will extend. They add that a simple lean-to shelter, constructed using traditional materials and finishes, would be more appropriate.

## OBSERVATIONS

In accordance with the provisions of Section 25 of the Act the Committee is required to consider

- a whether the proposals are consistent with the provisions of the development plan; and if not
- b whether an exception to the provisions of the development plan is justified by other material considerations.

### The Development Plan

The provisions of the development plan relevant to the determination of this application are specified in the Policy background section above.

In terms of Policy 1, the relevant issues relate to design and noise. The matter of the design of the structure is considered in more detail in the assessment of the development against Policies 55 and 61 of the Plan below.

In terms of noise, as this application does not include the amusement with prizes machines, the issue relates to noise from customers using the shelter. This type of noise is more difficult to measure and control. The Noise Report suggests that vocal noise from users of the smoking shelter is occasionally audible but at a level that is unlikely to be considered a nuisance. Taking into account the size of the shelter and the fact that the premises must close by 22.00 hours, it is considered that noise from customers will not be so severe as to justify a refusal of planning permission.

Policies 55 and 61 seek to protect the setting of listed buildings and to

preserve or enhance the character of conservation areas.

Campbell's Close is an attractive close between 2 Category A listed buildings. The listed buildings to the west form part of the Gardynes Land complex, comprising some of the most important listed buildings in the city, and the renovation of these buildings to form a youth hostel is almost complete.

Despite the fact that the visual amenity of Campbell's Close is partly compromised by unauthorised air conditioning units erected by the applicants, it is still well maintained and secured by a decorative iron gateway at its entrance. It is considered that the setting of the close and both the category A listed buildings on either side of it is compromised by the erection of a smoking shelter whose design and materials do not relate in any manner to its surroundings. The proposed structure is not untypical of the type of structure that might be found in the back garden of a suburban house with a lean to felt roof and timber decking style floor and balustrading. The design and finishing materials used contrast starkly with the stone buildings on either side of Campbell's Close. It is concluded that the shelter detracts from the setting of these listed buildings contrary to Policy 55 of the adopted Local Plan.

In terms of Policy 61 and the impact of the development on the Central Area Conservation Area, when the decorative gateway to Campbell's Close is closed the development is barely visible. At present the gate is virtually permanently closed although this situation could change when the upper floor flats at 77 High Street are renovated. However it is considered reasonable to assume that the gate will generally remain closed for security reasons and in these circumstances it is considered that there will not be an adverse impact on the character of the Central Area Conservation Area.

It is concluded from the foregoing that the proposal does not comply with Policy 55 of the adopted Local Plan.

### Other Material Considerations

The other material considerations to be taken into account are as follows:

- (a) Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires planning authorities, in considering applications that affect a listed building, to have

special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

This matter has already been considered in the assessment of the proposed development under Policy 55 of the adopted Local Plan and it was considered that the development would have an adverse impact on the setting of the 2 Category A listed buildings which enclose Campbell's Close.

(b) Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires planning authorities, in considering applications in conservation areas to have special regard to the desirability of preserving or enhancing the character or appearance of that area.

This matter has already been considered in the assessment of the proposed development under Policy 61 of the adopted Local Plan and it was considered that given the screening impact of the decorative iron gateway the development would not have an adverse impact on the character and appearance of the conservation area.

#### (c) The Views of Consultees

The views of the Head of Environmental Health and Trading Standards on noise issues have been taken into account in the assessment of the development against Policy 1 of the Plan. It has been concluded that there are insufficient grounds to refuse the application on the basis of noise generation.

The views of the Historic Scotland on the impact of the development on the setting of the Category A listed buildings on either side of Campbell's Close have been taken into account in the assessment of the development against Policy 55 of the Plan and it has been concluded that there would be an adverse impact on the setting of the listed buildings.

#### (d) The Views of Objectors

The operators of the adjoining shoe shop dispute the fact that the applicants have a legal right to place this structure in the close and state that it obstructs fire escape both from their premises and the amusement centre.

The issue of the ownership of the close is not a material planning consideration. The concern about the

restriction of fire escape is a serious matter but is controlled through the Building Standards legislation. An application for a building warrant to retain this structure has not been submitted to date.

The other letter states concerns about the structure being unsightly and a hazard to passers by and adversely affecting the Category A listed buildings and the Central Area Conservation Area. It is not considered that the structure is a hazard to passers by or that it detracts from the conservation area as it is in an area enclosed by a gateway that restricts general public use and screens it from view from the High Street. However the concerns about the impact on the Category A listed buildings are shared.

It is concluded from the foregoing that there are no material considerations such as to justify the grant of planning permission contrary to the provisions of the development plan. It is therefore recommended that planning permission be refused.

### Design

The proposed structure is not untypical of the type of structure that might be found in the back garden of a suburban house with a lean to felt roof and timber decking style floor and balustrading. The design and finishing materials used contrast starkly with the stone buildings on either side of Campbell's Close.

### CONCLUSION

The proposed development detracts from the setting of the Category A listed buildings at 77-78 High Street to the east and 75-76 High Street to the west by reason of its design and finishing materials contrary to Policy 55 of the adopted Dundee Local Plan Review 2005 and the statutory duty set out in Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 to have special regard to the desirability of preserving the setting of listed buildings. Members should note that as the structure is already in place a decision to refuse planning permission will lead to enforcement action being taken to remove the structure.

### RECOMMENDATION

It is recommended that consent be REFUSED for the following reason:

### Reason

- 1 The proposed development detracts from the setting of the Category A listed buildings at 77-78 High Street to the east and 75-76 High Street to the west by reason of its design and finishing materials, contrary to Policy 55 of the adopted Dundee Local Plan Review 2005 and the statutory duty set out in Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 to have special regard to the desirability of preserving the setting of listed buildings. There are no material considerations that would justify the approval of this application contrary to the provisions of the Development Plan.